

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

JACOB DIAZ,

Plaintiff,

vs.

No. CIV-12-1117 KG/KBM

ROBERT METZGAR and JOSHUA RICHARDS,  
in their individual and official capacities as  
Albuquerque Police Officers,

Defendants.

ORDER

On October 17, 2014, the Court held a telephonic status conference in this case on the following matters:

1. the Court's Order (Doc. 134), filed October 2, 2014, that Plaintiff's counsel associate with co-counsel for purposes of pretrial matters and jury trial, and, who shall file an entry of appearance on or before close of business on October 15, 2014;

2. Plaintiff's claims against Defendant Metzgar and Defendant Richards in their official capacities as Albuquerque Police Officers;

3. Plaintiff's Motion for Leave to File Response the [sic] Defendant Richards Motion in Limine II [Doc. 80], (Doc. 136), filed October 17, 2014; and

4. Plaintiff's Motion for Leave to File Response the [sic] Defendant' [sic] Motion for Attorney Fees [Doc. 108], (Doc. 137), filed October 17, 2014.

*See* Clerk's Minutes (Doc. 139). Present at the hearing were Rozan Cruz, counsel for Plaintiff, Jerry Walz, counsel for Defendant Metzgar, and Trisha Walker, counsel for Defendant Richards.

For the reasons stated on the record at the October 17, 2014, hearing, the Court determines the following:

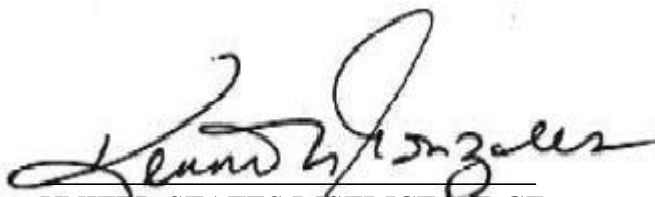
1. the Court grants Plaintiff's counsel an extension to midnight on October 31, 2014, to associate with co-counsel for the trial in this matter. If co-counsel has not entered his or her appearance by midnight on October 31, 2014, the Court will issue an Order to Show Cause;

2. the Court dismisses, without prejudice, Plaintiff's claims against Defendant Metzgar and Defendant Richards in their official capacities as Albuquerque Police Officers for lack of subject matter jurisdiction. As stated on the record, Plaintiff's allegations against Defendants in their official capacities do not support a claim for relief in a 42 U.S.C. § 1983 action. *See Will v. Michigan Department of State Police*, 491 U.S. 58, 71 (1989) (in a suit for damages, "neither a State nor its officials acting in their official capacities are 'persons' under § 1983"); *see also Ross v. The Board of Regents of The University of New Mexico*, 599 F.3d 1114, 1117 (10<sup>th</sup> Cir. 2010) (plaintiffs failed to state viable Section 1983 claim because plaintiffs sued only state agencies and state employees in their official capacities);

3. the Court denies Plaintiff's Motion for Leave to File Response the [sic] Defendant Richards Motion in Limine II [Doc. 80]; and

4. the Court grants Plaintiff's Motion for Leave to File Response the [sic] Defendant's [sic] Motion for Attorney Fees [Doc. 108]. Plaintiff must file a response by midnight on October 27, 2014. Defendants must file a reply by midnight on November 3, 2014.

IT IS SO ORDERED.



UNITED STATES DISTRICT JUDGE